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UNCLAS SECTION 01 OF 02 BOGOTA 006340

SIPDIS

STATE FOR EB/IFD/OIA/JPROSELI, AND L/CID/JNICOL

E.O. 12958: N/A

TAGS: [KIDE](#) [EINV](#) [EFIN](#) [PGOV](#) [CASC](#) [CO](#)

SUBJECT: 2005 REPORT ON INVESTMENT DISPUTES AND
EXPROPRIATION CLAIMS

REF: SECSTATE 77014

1. This is post,s response to reftel request for the 2005 report on U.S. citizen expropriation claims and other investment disputes involving the Government of Colombia. It is worth noting that the two cases in the 2005 report are being decided through normal judicial action or in transparent negotiations with the claimants.

COLOMBIA

2. The United States Government is aware of two (2) claims of United States Persons against the Government of Colombia, one of which one has been resolved.

I. A. Claimant A

B. 1984

C. The claim is based on Claimant A,s reported 1982 discovery of the Spanish galleon San Jose. In accordance with Colombian law, Claimant A registered the coordinates of the discovered ship with the Colombian Government and negotiated with the Government of Colombia for a contract to salvage the galleon over a two year period of time.

Claimant A maintains that under Colombian law in place at the time of the discovery of the San Jose, Claimant A had a right to approximately 50 percent of the property salvaged. Claimant A also claims that a 1984 Presidential decree and a 1996 law, which stipulated that Claimant A could only receive 5 percent of any treasure salvaged from the site, were expropriatory acts because they illegally reduced Claimant A,s share of the salvaged property. The Colombian Government has consistently maintained that Colombian law existing at the time Claimant A reported its coordinates granted Claimant only a 5 percent finder,s fee.

Three 1994 Colombian court cases support Claimant A,s claims. 1) On March 10, 1994, the Constitutional Court (Colombia,s higher court on Constitutional matters) struck down as unconstitutional the 1984 Presidential decree. 2) On July 6, 1994, a district court established that Claimant A is entitled to a 50 percent discoverer,s share of any treasure recovered from the site, a decision upheld on appeal by the district superior court March 7, 1997. The Government of Colombia has appealed this decision. 3) On October 12, 1994, another district court issued a sequestration order requiring any treasure salvaged from the sites to be held by the court pending resolution of the dispute.

At Claimant A,s request, State Department officials have repeatedly raised the possibility of a negotiated settlement with Colombian Government officials since 1995. The Colombian Government agreed in mid-1998 to discuss an out-of-court settlement with Claimant,s attorneys. In April 1999, Claimant,s lawyers met in Washington with the chief counsel of the Colombian Presidency and representatives of the Colombian Embassy.

In February 2004, a Colombian court agreed with the Colombian Government,s argument that the Colombian people owned the estimated \$US5 billion treasure. The tribunal denied Claimant,s aspiration to half of the property. The tribunal,s decision came after a Bogota court,s recent rejection of a UNESCO convention on undersea cultural heritage, which backed Spain,s claims to its sunken galleons around the world. However, this decision will not have a practical effect until the Colombian Constitutional Court decides on a pending appeal filed by Claimant A . The Constitutional Court has delayed ruling on this issue several times, initially expected for June 2004, but now delayed until the second half of 2005. The Government of Colombia is not interested in any further negotiations until the Constitutional Court issues a decision.

II.

A. Claimant B

B. 2004

TermoEmcali is a 234 MW, natural gas-fired combined cycle

power station located near Cali, and supplies power to the Emcali utility. The project's majority owner is an affiliate of Claimant B. ThermoEmcali bondholders include some of the largest global financial institutions -- including pension funds, insurance companies and investment banks.

On March 6, 2003, the Colombian Federal Government, which took control of Emcali in 1998, announced it had issued a resolution halting all payments to Emcali creditors, including those associated with the ThermoEmcali power facility. The federal government action caused ThermoEmcali to default on its bonds.

On December 28th, 2004, Emcali and the bondholders reached a restructuring agreement with the Colombian authorities. Separately the Colombian authorities reached an agreement with local creditors of ThermoEmcali. The agreements allowed local creditors to receive their payments and gave them approval rights over any subsequent debt restructuring agreement.

On February 16th the local creditor executive committee rejected a proposed restructuring agreement and asked to delay negotiations with the ThermoEmcali project for an additional 10 years. On April 21st, ThermoEmcali filed a lawsuit challenging certain payments mandated by the December 28th decision of the Superintendent concerning local creditors.

The Committee of Emcali Creditors met again on May 17 and agreed to allow payments to ThermoEmcali to be deposited in a fiduciary account pending the restructuring of the debt agreement. The Committee also extended the deadline for restructuring negotiations until October. The GOC indicates that the case should be favorably resolved by the 31st of October.

WOOD